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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 JANE FITZGERALD BLACK,

11 Plaintiff,

12 v.

13 COLUMBIA DISTRIBUTING OF SEATTLE,
14 LLC d/b/a YOUNG'S COLUMBIA, an Oregon
corporation,

15 Defendant.

CASE NO. C04-1871RSM

ORDER ON MOTION FOR
RECONSIDERATION

16 This matter is before the Court on plaintiff's motion for reconsideration of the March 21, 2005
17 Order. The Court deems a response to this motion by defendant unnecessary .

18 Plaintiff contends that the Court erred in stating that she conceded her jury trial argument by
19 failing to renew it in the supplemental briefing, because that briefing was meant only to supplement, not
20 supplant, the original briefing. While plaintiff's understanding of the meaning of "supplement" is correct,
21 she fails to recognize the full reach of that meaning. The Court's order directing supplemental briefing on
22 two relevant Washington Supreme Court decisions stated that "[t]he parties **shall** address the
23 applicability of the rulings therein to the issues before this Court. . ." In the Order issued after review of
24 the supplemental briefing, the Court stated

25 In her original opposition to the motion to compel arbitration, plaintiff asserted that the
26 loss of right to a jury trial without a knowing and voluntary waiver of that right is a

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28 ORDER ON PENDING MOTIONS - 1

1 substantial component of substantive unconscionability. The Adler¹ court foreclosed this
2 argument, noting that “by knowing and voluntarily agreeing to arbitration, a party implicitly
3 waives his right to a jury trial by agreeing to an alternate forum, arbitration.” Thus, a claim
4 that the waiver of right to a jury trial was not knowing and voluntary is inextricably related
5 to a finding of procedural unconscionability [sic].

6 Dkt. # 20 (citations omitted). As the quoted language in Adler was directly applicable to plaintiff’s
7 substantive unconscionability claim, it was incumbent upon her to address it in the supplemental briefing,
8 to distinguish her situation. In failing to do so, she bore the risk that the Court would find no procedural
9 unconscionability, and her substantive unconscionability claim based on waiver of a jury trial would be
10 thereby foreclosed by Adler..

11 Plaintiff’s motion for reconsideration is accordingly DENIED.

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13 DATED this 15 day of April, 2005.
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17 RICARDO S. MARTINEZ
18 UNITED STATES DISTRICT JUDGE
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27 ¹Adler v. Fred Lind Manor, et al., 103 P.3d 773 (2005).